IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T & I. J.

NOTICE OF MOTION NO. 548 OF 2004

IN

PETITION NO. 428 OF 2002

Mrs. Meera Ashok Adhye .. Petitioner.

vs.

Shakuntala Anant

Kotibhaskar & Anr. .. Respondents.

Mr. C.P. Doigirikar for petitioner.

None for Respondents.

CORAM : S.U.KAMDAR, J.

DATE : 5th August,2005.

P.C.

. The present notice of motion has been taken out by the petitioner for the relief that the 2nd respondent who is M/s. Hindustan Level Ltd.,be directed to issue duplicate share certificates and further the 2nd respondent be directed to deposit in this Court the market value of the shares which were belonging to the deceased. The 2nd respondent M/s. Hindustan Lever Ltd., has filed an earlier affidavit dated 18.3.2004 in which they have mentioned that

there has been fraud committed and the shares have been disposed of to the third parties. It has been also mentioned that in view of the provisions of Section 84 of the Companies Act, 1956 and Article 21 (c) of the Articles of Association, the 2nd respondent cannot issue any duplicate share certificates held by the deceased ceased to exist in physical form consequent to their demat in electronic form. The advocate for the respondent no. 2 has forwarded an affidavit dated 3.8.2005 to the petitioner, a copy whereof has been given by the petitioner. On perusal of the said affidavit, it has been clear that there is some fraud committed and the shares of the deceased have been misused. A criminal case is pending and investigations are in progress. The learned counsel for the petitioner however contends that this Court should pass necessary orders in respect of the shares belonging to the deceased because the respondent no. 2 has been negligent and by virtue of their negligence, the said shares have been lost. In the testamentary jurisdiction, it is not possible to pass any such order on the ground of negligence on the part of the 2nd respondent. The 2nd respondent is not concerned with the shares of the deceased save and except it is the company whose shares the deceased was holding. It is equally not possible to pass any order or decree in testamentary jurisdiction on the ground of tortuous liability of the 2nd respondent

in view of his negligence. In view thereof, motion is disposed of. No order as to costs.

2. Copy of the affidavit of the 2nd respondent is taken on record.